



Republic of Serbia
**COMMISSION FOR
PROTECTION OF
COMPETITION**

25/IV Savska street
Number: 5/0-01-383/2021-04
Date: August 19, 2021

Belgrade

SUBJECT: Opinion on the effect of Article 4 of the Rulebook on scheduling burials and cremations as of December 10, 2014, on the competition

The Commission for the Protection of Competition (hereinafter referred to as: Commission) on April 12, 2021 received the Initiative for Investigation of Competition Infringement, filed by the Association of Private Funeral Companies of Serbia, seated at 1-k Dalmatinske zagore Street, Belgrade - Zemun.

According to the Initiative, the PUC "Pogrebne usluge" Belgrade is abusing its monopoly position referred to in Article 16 of the Law on Protection of Competition ("Official Gazette of the Republic of Serbia", number 51/09 and 95/13, hereinafter referred to as: Law) on the market of burial services, i.e. services of keeping the remains of deceased persons in cooling devices - refrigerators.

As further stated in the Initiative, the PUC "Pogrebne usluge" Belgrade manages nine of the largest cemeteries in Belgrade and the daily scheduling of burials is done through the service of this public company, with the fact that the scheduling of burials is always conditional on the exclusive request that the remains of the deceased be brought and left in cooling units of the PUC "Pogrebne usluge". According to the opinion of the applicant of the Initiative, the said action is contrary to Article 3, paragraph 1, item 6a of the Law on Communal Activities ("Official Gazette of RS", No. 88/2011, 104/2016 and 95/2018), whereby such action simultaneously limits and prevents competition on the market of services for keeping the remains of deceased persons in cooling devices - refrigerators, to the detriment of competitors who meet the conditions for performing the activity in question, referred to in the Law on communal activities and the Regulation on the manner and conditions for starting the performance of communal activities ("Official Gazette of the RS", no. 13/2018 and 66/2018).

Acting according to the aforementioned Initiative, the Commission analyzed, among other things, the Rulebook on scheduling burials and cremations as of April 10, 2014, filed by the PUC "Pogrebne usluge" Belgrade. Pursuant to the competences of the Commission from Article 21, paragraph 1, item 7) of the Law and Article 19, paragraph 1, item 1) of the Statute of the Commission for the Protection of Competition ("Official Gazette of RS" No. 49/2010), the Council of the Commission at the ____ session as of August ____ 2021, gives the following:

OPINION

The rulebook on scheduling burials and cremations adopted on December 10, 2014 by the PUC "Pogrebne usluge" Belgrade, defined the conditions under which burials of persons who died outside medical institutions in Belgrade can be scheduled.

According to Article 4 of the said Rulebook: "Burial and cremation of the remains of persons who died outside medical institutions in Belgrade (remains of deceased persons who were not transferred to the city mortuary-chapel) can be scheduled once transferred to the cemetery where they will be buried, i.e. to the cemetery where the cremation will take place, or to another cemetery within the company..."

On the basis of the cited provision of the Rulebook, it follows that in order to schedule a funeral at the cemeteries managed by the PUC "Pogrebne usluge", it is expressly required to bring the remains to its cooling devices, which means that private undertakers are completely excluded as competition in the provision of the aforementioned services, contrary to the right set forth by the Law on Communal Activities.

According to Article 3, paragraph 1, item 6a of the Law on Communal Activities, the funeral activity implies the collection and transportation of remains from the place of death, i.e. the place where the deceased person is located (apartment, health institution, institutes for forensic medicine and pathology, institutions of social protection and other places) and transport to the place designated by a special regulation (pathology, forensic medicine, cemetery, crematorium, airport, office space of a funeral company in which there are prescribed conditions for accommodation and care of the deceased), organization of the funeral and send-off, along with the obtaining of the necessary documentation for the organization of transport and burials, keeping the remains in a cooling unit and preparing the deceased for burial.

The provision of Article 4, paragraph 2 of the Law on Communal Activities, sets forth that the local self-government unit shall regulate, in accordance with the law, the conditions for performing communal activities, the rights and obligations of users of communal services, the scope and quality of communal services and the way of supervising the performance of communal activities, ensuring especially, among other things, competition in performing activities (item 5).

In line with provisions of Article 5 paragraph 1 of the Law on Communal Activities, communal activities can be performed by a public company, a company, an entrepreneur or another business entity.

The provision of Article 9 of the same law stipulates that entrusting the performance of communal activities implies a time-limited contractual regulation of relations in connection with the performance of communal activities or certain tasks within the framework of communal activities between one or more units of local self-government and the communal activities agent, the purpose of which is provision of communal services in the territory of one or more local self-government units or on part of the territory of a local self-government unit (paragraph 1) and that notwithstanding paragraph 1 of this article, the communal activities referred to in Article 2, paragraph 3, item 6a) of this Law are not entrusted, but **can be performed by all economic entities that meet the prescribed conditions (paragraph 2).**

Based on the above, the Commission concludes that the Law on Communal Activities and accompanying acts exempts funeral activities from entrusting and enables competition and equal participation in the market of communal activities providers, i.e. public utility companies on the one hand and all economic

entities that meet the prescribed conditions on the other hand, which is not the case in Belgrade cemeteries in practice.

Acting in line with Article 4 of the Rulebook on scheduling burials and cremations, as of December 10, 2014, the PUC "Pogrebne usluge" Belgrade, in the cemeteries that it manages in the territory of the City of Belgrade, prevents or conditions the scheduling of burials on the exclusive request that the remains of the deceased be left in the cooling units of the PUC "Pogrebne usluge" Belgrade, thus putting other market participants who provide this service, at a disadvantage.

According to the Commission's assessment, the application of Article 4 of the Rulebook on scheduling funerals and cremations as of December 10, 2014, due to its non-compliance with the amendments to the Law on Communal Activities that entered into force on January 1, 2017, leads to the prevention and limitation of competition on the market. In the light of the dates of adoption of the aforementioned acts, the Commission is of the opinion that it is necessary for the PUC "Pogrebne usluge" Belgrade to analyze the Rulebook on scheduling burials and cremations, not only in terms of the disputed Article 4, but also in terms of the possible impact on the conditions of competition on the market and others articles of the Rulebook, and to amend and supplement the same, i.e. fully align it with the provisions of the Law on Communal Activities and other regulations that govern the communal activity in question, thus eliminating the possibility of future disputed actions of the PUC "Pogrebne usluge".

The Commission notes that if the PUC "Pogrebne usluge" Beograd fails to align its acts with positive regulations in the shortest possible period of time and continues to act in accordance therewith, there is a possibility of initiating proceedings against this public company in order to determine the act of competition infringement referred to in Article 16 of the Law.

PRESIDENT OF THE COMMISSION

Nebojša Perić, m.p.